

FILED

AUG 28 2007

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 23, 2007

No. 06-51623
USDC No. 5:06-CV-354

Charles R. Fulbruge III
Clerk

BERNARDO HERNANDEZ GONZALEZ

Petitioner-Appellant

v.

NATHANIEL QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

Respondent-Appellee

Appeal from the United States District Court
for the Western District of Texas

O R D E R:

Bernardo Hernandez Gonzalez, Texas prisoner # 1075996, was convicted by a jury of murder and was sentenced to 80 years in prison. He seeks a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 petition challenging this conviction. Hernandez Gonzalez asserts that the jury panel was tainted and was biased against him, that the prosecution presented and the trial court admitted fabricated evidence and perjured testimony, that the prosecution withheld evidence, that the trial court denied him a complete copy of his state records, that the trial court wrongly denied a motion for continuance

when Hernandez Gonzalez absconded in the middle of the trial, that the indictment was fundamentally flawed, that trial and appellate counsel rendered ineffective assistance, that he was denied access to the courts by the actions of the Texas Court of Criminal Appeals, and that the trial court erred in denying his requested jury instructions. He has not established "that jurists of reason would find it debatable whether" the district court erred in denying relief on his claims. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003). To the extent that Hernandez Gonzalez is arguing that the trial court erred in its entry of the date his sentence commenced, this claim was never properly presented to the district court and will not be reviewed here. See, e.g., *Whitehead v. Johnson*, 157 F.3d 384, 388 (5th Cir. 1998). Consequently, the motion for COA is DENIED. Hernandez Gonzalez's request to proceed in forma pauperis on appeal is likewise DENIED.

/s/ Priscilla R. Owen

PRISCILLA R. OWEN
UNITED STATES CIRCUIT JUDGE

A true copy

Attest:

AUG 23 2007

Clerk, U. S. Court of Appeals, Fifth Circuit

By

Madeline Chigot

Deputy

New Orleans, Louisiana